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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
CHAMELEON RADIO CORPORATION)	MM Docket No. 96-173
)	
Order To Show Cause Why the License)	
of Station KFCC(AM), Bay City, Texas,)	
Should Not Be Revoked)	
)	
Request for Extension of Special)	
Temporary Authority)	

To: The Commission

MASS MEDIA BUREAU'S OPPOSITION TO
PETITION FOR RECONSIDERATION

1. On May 22, 1998, Chameleon Radio Corporation ("Chameleon"), by its attorneys, filed a "Petition for Reconsideration" of the Commission's *Decision*, FCC 98-73 (released April 22, 1998). The *Decision* affirmed the Initial Decision of Administrative Law Judge Joseph Chachkin, 12 FCC Rcd 19348 (1997), which revoked Chameleon's license to operate Station KFCC(AM), Bay City, Texas. The Mass Media Bureau ("Bureau"), pursuant to Section 1.106(g) of the Commission's Rules, 47 C.F.R. §1.106(g), hereby opposes Chameleon's petition.

2. Although its pleading is styled as a petition for reconsideration, Chameleon does not seek any specific change in the *Decision's* findings or conclusions. Rather, Chameleon seeks to avoid the ultimate conclusion -- license revocation -- that ordinarily follows from a Commission determination that a licensee misrepresented facts and lacked candor.

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Specifically, Chameleon, for the first time in this proceeding, requests that the Commission permit it to assign the KFCC license to Bernard Smoots ("Smoots"), an African-American, for 50 percent of the station's fair market value pursuant to the Commission's distress sale policy. In this regard, Chameleon maintains that the Commission should take the extraordinary step of waiving its policy to permit it to assign the station license *after* the Presiding Judge found it thoroughly unqualified to remain a Commission licensee and ordered revocation of the station license *and* after the Presiding Judge's decision has been affirmed by the Commission.

3. Although titled a petition for reconsideration, Chameleon's pleading is essentially a request for extraordinary relief to permit Chameleon to assign the station by distress sale. A petition for reconsideration is not the proper means to propose a distress sale, and on that basis alone, Chameleon's pleading should be dismissed. Moreover, to the extent that Chameleon has offered no basis to introduce at this stage of the proceeding new facts and arguments regarding the sanction ordered by the Presiding Judge and affirmed by the Commission, the petition should be dismissed.¹ See Section 1.106(c) of the Commission's

¹ Among other things, Chameleon claims that revocation of the KFCC license will deprive Bay City of its only AM radio station, a claim that rings hollow in light of its oft-repeated original intent to change this station's community of license from Bay City to an area that would permit it to serve Houston. In fact, Chameleon's relocation of KFCC from Bay City in order to serve Houston, its failure to place an adequate signal over Bay City, and its attendant misrepresentations were the reasons for this hearing and revocation of license. Moreover, Chameleon claims that when considering sanctions against this licensee, the Commission failed to consider other sanctions short of revocation. However, any election by a licensee to pursue distress sale relief is just that -- an election to be pursued by the licensee in order to forego a hearing, and not a sanction to be imposed by the Commission. Thus, the Commission should reject Chameleon's instant argument that "license revocation unfairly penalizes this broadcaster at the expense of the public."

Rules.

4. As a petition for extraordinary relief, Chameleon's request that it be permitted to assign the station license to Smoots pursuant to the distress sale policy must be denied. To qualify for distress sale relief, a licensee must show that the hearing has not yet commenced, that there is significant minority ownership in the proposed assignee, and that the station will be sold at a maximum of 75 percent of the fair market value as of the date for designation of the hearing. *Lee Broadcasting Corp.*, 76 FCC 2d 462 (1980); *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978); and *Clarification of Distress Sale Policy*, 44 RR 2d 479 (1978). Because Chameleon did not propose to assign the station license before the commencement of the hearing, it does not qualify for distress sale relief. Chameleon acknowledges this deficiency, but urges the Commission to waive its policy to permit the requested relief.

5. Specifically, Chameleon argues that good cause exists for the Commission to waive the requirement that the hearing must not have commenced. In addition to citing the benefits to be achieved by increasing minority ownership of broadcast facilities generally, Chameleon argues that it was not aware of the distress sale policy until just one month before the Commission released its *Decision*, when it retained its current counsel. It argues that if it had been aware of this policy before the hearing commenced, it "would likely have suggested this as a possible remedy at that time."

6. Chameleon's argument that it was not aware of the distress sale policy until just recently is unconvincing. Chameleon was represented by communications counsel until virtually the eve of the hearing, originally scheduled to commence on February 11, 1997. After that original counsel withdrew from the case, Chameleon successfully sought an extension of time to commence the hearing, noting, among other things, that its President, Don Werlinger ("Werlinger"), spoke to at least four other attorneys. *See* Attachment 1. Chameleon eventually elected to be represented by Werlinger, acting *pro se*. In the absence of any evidence to the contrary, and given the Presiding Judge's finding that Chameleon has demonstrated that its claims cannot be trusted, there is simply no basis to presume that Chameleon was not or could not be aware of its legal options and responsibilities until after the hearing was completed, the Initial Decision was issued and affirmed, and Chameleon was down to its last appeal to the Commission.

7. Grant of the requested relief would severely undermine the distress sale policy, as well as the hearing process. Any of the benefits accrued by pursuing a distress sale before the hearing commences, rather than going through the entire hearing process, are not achieved by permitting a distress sale under these circumstances. The requirement that a licensee whose license has been designated for hearing elect the distress sale option *prior* to commencement of the hearing is designed to avoid the potentially long and costly hearing process and to prevent belated efforts to assign a license where an adverse outcome appears likely. *Clarification of Distress Sale Policy*, 44 RR 2d at 479. For these reasons, the Commission has consistently denied distress sale requests made after all or part of the

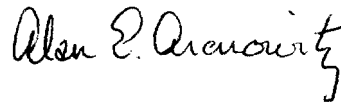
hearing process has been completed. *See Bartell Broadcasting of Florida, Inc.*, 45 RR 2d 1329 (1979); *Stereo Broadcasters, Inc.*, 74 FCC 2d 543 (1979); *Golden Broadcasting Systems, Inc.*, 68 FCC 2d 1099 (1978); *Leflore Broadcasting Co., Inc.*, 43 RR 2d 807 (1978). Chameleon has offered no basis for the Commission to depart from this well-established policy, particularly where the adverse outcome of the hearing is now a reality. *Cf. Dorothy O. Schulze and Deborah Brigham, A General Partnership*, 12 FCC Rcd 2602 (1997), *recon. denied*, 13 FCC Rcd 3259 (1998) (denying a "settlement" which proposed the sale of an unqualified applicant's interest in a construction permit to an entity which was assertedly qualified to obtain the permit after concluding that the unqualified applicant had nothing to transfer).

8. Accordingly, for the foregoing reasons, the Bureau requests that Chameleon's petition for reconsideration be dismissed or, alternatively, denied.

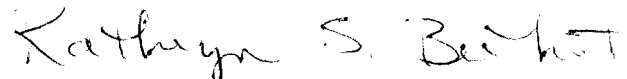
Respectfully submitted,
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June 1, 1998

ATTACHMENT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 97M-17

70716

In re) MM DOCKET NO. 96-173
)
CHAMELEON RADIO CORPORATION)
)
Order to Show Cause Why the)
License of Station KFCC(AM),)
Bay City, Texas Should Not)
Be Revoked)
)
Request for Extension of Special)
Temporary Authority)

ORDER

Issued: February 10, 1997

Released: February 12, 1997

Under consideration are "Emergency Motion For Change In Hearing Dates" filed February 3, 1997 by Chameleon Radio Corporation (Chameleon), Mass Media Bureau's Opposition To Emergency Motion For Change In Hearing Dates filed February 4, 1997, a Letter dated February 6, 1997 from Chameleon, and Mass Media Bureau's Comments On Letter Of Chameleon Radio Corporation filed February 7, 1997.

As set forth in the Presiding Judge's Order (FCC 97-15, released February 6, 1997), incorporated herein by reference, Chameleon initially requested a 30 day postponement to afford new counsel to prepare for the hearing (scheduled for February 11, 1997). Chameleon's request was held in abeyance pending a statement from such counsel advising of the need for such a lengthy postponement.

On February 6, 1997, the Presiding Judge received a letter pleading signed by Chameleon's President, Don Werlinger. Werlinger states therein that original counsel withdrew from the case because Chameleon was unable to meet his payment schedule; that Werlinger subsequently tentatively retained other counsel (and on whose behalf Chameleon filed the request for an emergency extension of 30 days) who is also now unavailable for similar reasons; that Werlinger has spoken to four other attorneys who are unwilling to represent Chameleon; that Werlinger has been working to procure sufficient funds to bring original counsel back; and that assuming he is unsuccessful, Werlinger is prepared to move forward pro se as of February 20, 1997. Therefore, Chameleon now requests a continuance of 9 days as opposed to its original request of 30 days.

Chameleon's request for a brief continuance will be granted. The short delay in commencement of the hearing due to Chameleon's efforts to obtain counsel do not appear to prejudice the Bureau or unduly disrupt the hearing. They do not justify, as suggested by the

Bureau, the imposition of sanctions against Chameleon such as restricting Chameleon's right to cross examine the Bureau's witnesses. Finally, it is noted that February 20 falls on a Thursday. The Presiding Judge prefers to start the hearing on a Monday (February 24) with the hope that this will permit the hearing to be concluded the same week.

Accordingly, IT IS ORDERED, That the "Emergency Motion For Change In Hearing Dates" filed February 3, 1997 IS GRANTED in part; That the date for notification of witnesses IS CONTINUED to February 19, 1997, and the hearing date IS CONTINUED to February 24, 1997 at 10:00 a.m. in the Commission's Washington, D.C. offices.

FEDERAL COMMUNICATIONS COMMISSION

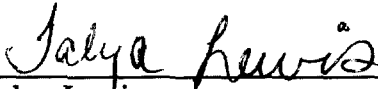
A handwritten signature in black ink, appearing to read "Joseph Chachkin". The signature is fluid and cursive, with the first name "Joseph" written in a larger, more prominent script than the last name "Chachkin".

Joseph Chachkin
Administrative Law Judge

CERTIFICATE OF SERVICE

Talya Lewis, a secretary in the Enforcement Division, Mass Media Bureau, certifies that she has on this 1st day of June 1998, sent by regular United States mail copies of the foregoing "**Mass Media Bureau's Opposition to Petition for Reconsideration**" to:

Chameleon Radio Corporation
c/o Thomas A. Hart, Esq.
Shook, Hardy & Bacon, L.L.P.
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Talya Lewis